No. 108.

Brief of Perry for Pltf. in Err. on mo.

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In the Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

Brief of Plaintiff in Error on the Motion to Dismiss.

R. ROSS PERRY,
Attorney for Plaintiff in Error.

LAW REPORTER PRINT.

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THE CAPITAL TRACTION COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES HOF.

Brief of the Plaintiff in Error on the Motion to Dismiss.

I.

BRIEF STATEMENT OF FACTS.

The petition for the allowance of the writ of *certiorari* in this cause was filed in the Supreme Court of the District of Columbia the 8th of September, 1896. It prayed that court to have certified to it the proceedings in a cause pending before a Justice of the Peace of the District of Columbia, in which the petitioner was the defendant and Charles Hof the plaintiff (R., 1). The ground for this prayer was that the said Hof had demanded a jury trial before the said justice under the provisions of sections 1009–1016 of the Revised Statutes of the United States relating to the District of Columbia. (R., 2, 3, 4.)

These sections read as follows:

> "Sec. 1009. In every action where the sum demanded shall exceed twenty dollars, it shall be lawful for either of the parties to the suit, after issue

joined, and before the justice shall proceed to inquire into the merits of the case, to demand of the justice that such action be tried by a jury.

"Sec. 1010. Upon such a demand the justice shall issue a *venire*, under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors, to be and appear before the justice issuing such *venire*, at such time and place as shall be therein expressed.

"Sec. 1011. The jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.

"Sec. 1012. If any of the persons summoned and returned as jurors shall not appear, or shall be challenged or set aside, the justice before whom the cause is to be tried shall direct the constable to summon, and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge shall have been disposed of by the justice.

"Sec. 1013. The twelve persons shall be the jury who shall try the cause, each of whom shall be sworn by the justice, well and truly to try the matter in difference between the parties, and a true verdict to to give, according to evidence.

"Sec. 1014. The jury being sworn, shall sit together, and hear the proofs and allegations of the parties in public.

"Sec. 1015. [Provides for an oath to the constable to keep the jury together].

"Sec. 1016. When the jurors have agreed upon their verdict, they shall deliver the same publicly to the justice.

"Sec. 1017. The justice shall give judgment thereon forthwith, and may issue execution accordingly."

The writ issued as prayed and the return of the Justice of the Peace, filed September 9, 1896, showed that a trial by jury had been demanded by the said Hof (R. 5). A motion to quash the writ was filed on the 11th of the same month, but was overruled, and all proceedings before the Justice of the Peace after issue joined were quashed. An appeal

from this order was taken to the Court of Appeals on October 14, 1896 (R. 6, 7.) That court, on February 17, 1897, reversed the judgment of the lower court and ordered the writ to be quashed (R. 34) From this order a writ of error to the Supreme Court of the United States was prayed, but was denied by the Court of Appeals on March 9, 1897. (R. 35.)

Thereupon a petition for the allowance of a writ of error was filed in this court, allowed, upon consideration, by the Chief Justice, and issued April 3, 1897. (R. 36, 37.)

No steps in the proceedings were afterwards taken until the month of October, 1898. Then, after this case had been pending in this court for a year and a half, notice was given by the attorney for the Defendant in Error that he would move to dismiss the writ of error on the ground that this court was without jurisdiction to hear the cause; and upon the further ground that the Defendant in Error was not a proper party to the record.

The importance and effect of this case are far reaching. Its gravity can be seen from a reading of the opinions of the justices of the Court of Appeals (R., pp. 9–34), and the brief of the Plaintiff in Error which has been filed in this court. It need only be said here that, according to the opinion of the Court of Appeals, Congress has power to confer upon Justices of the Peace in the District of Columbia jurisdiction over causes involving any amount, on the ground that the jury before a Justice of the Peace is a common law jury as contemplated by the Seventh Amendment to the Constitution of the United States. According to the majority opinion of the Court of Appeals there is no appeal from the judgment of a Justice of the Peace, entered upon the verdict of such a jury. (R., pp. 9–26.)

By the Act of February 19, 1895 (28 Stat. 668), the exclusive jurisdiction of Justices of the Peace was enlarged to one hundred dollars, while between one hundred and three

hundred dollars, there is concurrent jurisdiction in the Justices of the Peace and the Supreme Court of the District of Columbia.

By the Act of February 27, 1801 (2 Stat. 103), Justices of the Peace were given jurisdiction over claims to the value of twenty dollars. This jurisdiction was extended to fifty dollars by the Act of March 1, 1823 (3 Stat. 743), to one hundred dollars by the Act of February 22, 1867 (14 Stat. 401), and to three hundred dollars by the Act of February 19, 1895 (28 Stat. 668).

II.

ARGUMENT AND AUTHORITIES.

A.

The writ of error sued out in this case is based upon the provisions of an act of Congress entitled—

> "An act regulating appeals from the Supreme Court of the District of Columbia, and the Supreme Courts of the several Territories,"

approved March 3, 1885, 23 Stat. 443. Ch. 355 provides:

> "That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.
>
> Sec. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

Commenting on these provisions, this court says, in the case of Baltimore and Potomac Railroad *vs.* Hopkins, 130 U. S. 222:

> "When the validity of a statute of, or authority exercised under, the United States, is drawn in question in a State court, the decision of the latter must be against its validity in order to justify a review of such decision, but under this act it is sufficient if the validity is drawn in question irrespective of the conclusion reached. So that the inquiry is confined to whether the validity of such a statute or authority is actually controverted."

It is the contention of the Plaintiff in Error that it claims in its petition for *certiorari* filed in the Supreme Court of the District of Columbia (R., pp. 1–4) that certain statutes of the United States—that is, sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia—are invalid and unconstitutional. The petition for *certiorari* expressly states in its second paragraph (R. 2) that the form of trial by jury in a court of a Justice of the Peace, as provided by sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia is unconstitutional. The return of the Justice of the Peace to the writ of *certiorari* (R. 5) showed that a jury trial in the Justice's court had been demanded by the plaintiff.

The allegation in the second paragraph of the petition that the effect of a trial by jury before a Justice of the Peace, as provided in the said sections of the Revised Statutes, will be to subject the petitioner to an unconstitutional trial, is the same thing as an allegation that those sections are unconstitutional, for the reason that they provide for an unconstitutional jury. It would seem a mere dispute of words and not of substance to contend the contrary. Yet it is not disputed that the latter allegation would be sufficient

to bring in question the validity of the above-mentioned sections of the Revised Statutes.

In paragraphs 4 and 5 of the petition it is set forth that "under sections 1009 to 1016 of the Revised Statutes, D. C., and the construction placed upon them in practice," a jury before a Justice of the Peace, in many ways therein mentioned, is not a jury as contemplated in the Seventh Amendment to the Constitution of the United States. It is further stated in paragraph 6 of the petition that unless the case is removed from the court of the Justice of the Peace to the Supreme Court of the District of Columbia the petitioner will be deprived of its constitutional right to a trial by jury, and will be in danger of being deprived of its property without due process of law (R. 6).

The motion of the defendant in error to dismiss the appeal is based on the ground that there is no complaint of the right of Congress to enact sections 1009 to 1016 of the Revised Statutes of the United States relating to the District of Columbia, but merely of the construction placed upon them.

The construction, however, of an act of Congress is simply a declaration as to what the statute means, by the only authority competent to declare its meaning. In the case of Baltimore and Potomac Railroad Company *vs.* Hopkins, 130 U. S., this court says, at page 224:

> "Whenever the power to enact a statute as it is by its terms, or is made to read by construction, is fairly open to denial and denied, the validity of such statute is drawn in question, but not otherwise."

This is reiterated in the case of Miller *vs.* Cornwall Railroad Company, 168 U. S. 133. Therefore the allegation in the petition for *certiorari* of the construction of the above sections of the Revised Statutes relating to the District of Columbia is the same thing as the same allegation in regard to the sections themselves.

The necessary construction of paragraph 5 of the petition is that, by the above-mentioned sections of the Revised Statutes, the Seventh Amendment of the Constitution is violated.

Moreover, it will be noticed that it is not merely the construction of these sections which is complained of. The complaint in paragraph 4 is placed in the conjunctive, as follows (R. 2):

> "Petitioner is informed and advised that under said sections 1009 to 1016 of the Revised Statutes D. C., *and* the construction placed upon them in practice."

In addition the contention of the Defendant in Error seems to overlook the constitutional objections to a jury trial before a Justice of the Peace set forth in paragraph two of the petition for *certiorari*. This has been adverted to above.

Both the majority and minority opinions of the Court of Appeals in the consideration of this petition show clearly that the only point raised was as to the constitutionality of the said sections.

Mr. Justice Morris, delivering the opinion of the court, says (R. 10):

> "Upon appeal to this court, both of the cases now before us were argued together; and it is plain that the vital question in both is the same—the validity of the legislation of Congress providing for trial by jury in causes pending before justices of the peace. The question is one of very grave importance in the administration of justice in this District, and is deserving of our most serious consideration. This consideration we have earnestly sought to give to it."

And in the same opinion (R. 14) he says later:

> "It is upon the theory that the appeal, provided in the foregoing section 1028 of the Revised Statutes,

and in the Act of 1823, from which the section is taken, lies as well in causes tried before a justice of the peace by a jury as in those that are tried by him without a jury, that the proceedings in the first of the two suits now before us are based; while in the second of these two suits, as already stated, the constitutionality of all the provisions regarding trials by jury before justices of the peace is directly brought in question."

Mr. Chief Justice Alvey says in his dissenting opinion (R. 26):

> "The questions presented on these appeals are of more than ordinary importance to the people of this District. They affect the manner of administering justice, as it has heretofore been administered in civil cases, by justices of the peace. The questions are, 1st. What is the nature and extent of the civil jurisdiction of the several justices of the peace, under the Constitution and the acts of Congress made in pursuance thereof, as the Constitution and acts of Congress apply to the District of Columbia? 2d. Whether the Act of Congress of March 1, 1823, Ch. 24 (3 Stat. 743), and the subsequent re-enactment thereof, providing for trial by jury before justices of the peace in civil cases is constitutional and valid; and, if constitutional and valid, whether the jury so provided for is such a jury as is within the meaning and contemplation of the Seventh Amendment of the Constitution of the United States, or otherwise? and, 3d. If the acts of Congress giving the right to trial by jury in actions brought before justices of the peace be valid, whether the right of appeal exists to the Supreme Court of the District from judgments rendered upon such trial, and if an appeal lies, to what extent are such judgments re-examinable in the appellate court?"

In view of the foregoing considerations it is difficult to see how the validity of the sections in dispute could be more effectually brought in question.

B.

It is objected that in the present writ of error the Defendant in Error should have been the Justice of the Peace and not Charles Hof, the plaintiff in the trial of the cause.

This contention is directly contrary to the proceedings in the case of Harris *vs.* Barber, 129 U. S. 366, which was also an appeal from an order quashing a writ of *certiorari* directed to a justice of the peace of the District of Columbia in a matter involving the construction of the Landlord and Tenant Act of the District of Columbia. The parties in error were there the same in interest as in the present proceedings. The substantial party in interest here is Hof, not the Justice of the Peace. When the latter has certified his record his interest in the case ceases. Hof's rights and interests, not those of the Justice of the Peace, are being litigated, and were he not a party his rights would be passed upon and determined in a proceeding in which he had no opportunity or right to be heard. It is submitted that this court will in such cases regard the substance and not the form.

This objection hardly lies in the mouth of the Defendant in Error at this stage of the case. The original petition made him party respondent (R. 1). No demurrer was filed to it, nor was the motion to quash based upon this ground (R. 6). The Defendant in Error appealed to the Court of Appeals as Respondent to the petition (R. 6, 7). He can not, it is submitted, be heard now to aver for the first time that he is not properly such Respondent.

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